IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

Second Appeal No.363/05

Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.	**Court's or Judge's Orders.**

CORAM : **A.P. Lavande,J**
DATE : 16th August, 2006

Heard Shri B.H. Sontakke, learned counsel for the appellants.

2. This Second Appeal is directed against the Judgment and decree dated 6th January, 2005 passed by the First Ad hoc Additional District Judge, Chandrapur in Regular Civil Appeal No. 63/97 filed by the appellants against the Judgment and decree dated 1st July, 1997 passed by the Joint Civil Judge, Jr. Dn., Chandrapur in Regular Civil Suit No. 82/89. The appellants herein are the legal representatives of the original defendant against whom respondents herein filed the above suit for removal of encroachment, possession and permanent injunction. The trial Court after appreciating the evidence led by the parties held that the plaintiffs had proved their title to the suit property and that the defendant had encroached in a portion of the suit property. The defence taken by the defendant that he was in possession of the suit property for a period of over 30 years was negatived by the trial

court. The appellate Court in appeal preferred by the defendant concurred with the finding given by the trial Court and consequently dismissed the appeal.

3. Mr. Sontakke, the learned counsel appearing for the appellants submitted that both the courts below have erred in law in holding that the plaintiffs had proved their title to the suit property and rejected the claim of the defendant that he was in possession of the suit property for the period of over 30 years openly and peacefully. According to the learned counsel, both the courts below have erred in decreeing the suit filed by the plaintiffs by misconstruing the evidence led by the parties.

4. I have perused the impugned Judgments passed by both the Courts below. The findings of the trial Court that the plaintiffs have proved their title to the suit property and further that the plaintiffs had also proved that the defendant had encroached upon the suit property by construction of plinth and by erecting bomboo compound, have been arrived at after appreciating the evidence led by the parties. Upon perusal of the impugned Judgment, the findings given by the trial court which have been confirmed by the appellate court that the plaintiffs had proved their title and also encroachment in the suit property by the defendant, cannot be said to be perverse having regard

to the evidence led by the parties. There are concurrent findings recorded by both the courts below and the same cannot be termed as perverse. Therefore, no ground is made out for interference in the second appeal . No substantial question of law is involved in this appeal and hence the appeal is summarily rejected.

Judge

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